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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,420	12/20/2001	Todd A. Schwartz	884.619US1	2690

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EXAMINER	
RHODE JR, ROBERT E	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/027,420	SCHWARTZ ET AL.	
	Examiner	Art Unit	
	Rob Rhode	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/1/06*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 7 - 11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 7 - 11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12/1/06* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant amendment of 12-1-05 amended claims 1 and 8 as well as traversed rejections of Claims 1 – 5 and 7 - 11.

Currently, claims 1- 5 and 7 - 11 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 5 and 7 - 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Cansler (US 6,725,257 B1).

Regarding claim 1 and related claim 8, Cansler teaches a digital content pricing system, comprising: a sales computer calculating a final price; a purchase computer capable of being communicatively coupled with the sales computer; and a memory capable of being communicatively coupled with the sales computer, including a plurality of digital content items, wherein each one of the plurality of digital content items is associated

with a base price and at least one item configuration option associated with an option price, and wherein each one of the plurality of digital content items is associated with a final price related to the base price and the option price by a final pricing formula (see at least Abstract, Col 2, lines 41 – 67, Col 3, lines 1 – 3, Col 7, lines 14 – 19 and Figures 1 – 6). Please note that the phrase "digital content" in the preamble was given very little patentable weight in light of the fact that this phrase connotes intended use and thereby does not limit the apparatus and system to just "digital content". In addition, computer apparatus and system including memory store, which includes stored data such as "digital content" and associated/linked data is considered to be non-functional descriptive material and thereby too is given very little patentable weight (MPEP 2106). In online systems for identifying, selecting and configuring an items/product that a kind/type including such specifics of the product as "digital content" or features such as "option" as well linked/associated data of an item/product is given little patentable weight. The phrase(s) and or word(s) are given little patentable weight because the claim language limitation is considered to be non-functional descriptive material, which does not patentably distinguish the applicant's invention from Cansler. Thereby, the non-fictional descriptive material is directed only to the content of the data (. i.e. digital content and linked data/information - which is stored data/information) and does not affect the structure of Cansler, which leaves the system unchanged. Therefore and for examination purposes the claims 1 and 8 were considered to be - A pricing system, comprising: a sales computer calculating a final price; a purchase computer capable of being communicatively coupled with the sales computer; and a memory capable of

being communicatively coupled with the sales computer, including a plurality of associated items/products with corresponding options.

Regarding claim 2, Cansler teaches a digital content pricing apparatus, wherein at least one of the plurality of digital content items is directly associated with the final pricing formula (Col 7, lines 14 - 21).

Regarding claim 3, Cansler teaches a digital content pricing apparatus, wherein the memory includes a plurality of pricing formulae including the final pricing formula (see above rejection regarding non-functional descriptive material).

Regarding claim 4, Cansler teaches a digital content pricing apparatus of claim 1, wherein at least one of the plurality of digital content items is associated with a plurality of configuration options, including the item configuration option (Abstract and Figures 4 and 8).

Regarding claim 5, Cansler teaches a digital content pricing apparatus, wherein the final pricing formula includes an option adjustment factor associated with the item configuration option (see above rejection regarding non-functional descriptive material).

Regarding claim 7, Cansler teaches a digital content pricing apparatus, wherein the at least one selected external factor is determined by a type of selected ones of the plurality of digital content items, a quantity of each type of the selected ones of the plurality of digital content items, the base price, and the option price. The Examiner takes Official Notice that the ability to select a plurality of items, which obviously would

include quantity of different types would include a base price and option price in purchasing of cars for example. In this manner, the system will potentially increase revenue and profits as result of providing the ability to purchase multiple items.

Regarding claim 9, Cansler teaches a digital content pricing system, further comprising: an item selection device capable of being communicatively coupled to the purchase computer (Figures 1 and 2).

Regarding claim 10, Cansler teaches a digital content pricing system, wherein at least one of the plurality of digital content items is directly associated with the final pricing formula (see above rejection regarding non-functional descriptive material).

Regarding claim 11, Cansler teaches a digital content pricing system, wherein the final pricing formula includes an option adjustment factor associated with the item configuration option (see above rejection regarding non-functional descriptive material).

Response to Arguments

Applicant's arguments filed 12-1-05 have been fully considered but they are not persuasive.

Applicant argues that Cansler does not disclose a "digital content" system.

As noted and explained above, "digital content" was given very little patentable weight.

Please note that a "traverse" is a denial of an opposing party's allegations of fact.[1] The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse official notice, the following is admitted prior art:

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[1] Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

Regarding claim 7, Cansler teaches a digital content pricing apparatus, wherein the at least one selected external factor is determined by a type of selected ones of the plurality of digital content items, a quantity of each type of the selected ones of the plurality of digital content items, the base price, and the option price. The Examiner takes Official Notice that the ability to select a plurality of items, which obviously would include quantity of different types would include a base price and option price in purchasing of cars for example. In this manner, the system will potentially increase revenue and profits as result of providing the ability to purchase multiple items.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **571.272.6761**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **571.272.7159**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including After Final communications labeled "Box AF"]

For general questions the receptionist can be reached at 571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). RER

Jeffrey A. Smith
Primary Examiner